Supreme Court, U.S.
FILED
MAR 3 1992
OFFICE OF THE CLERK

91-1429

No. _____

In The

Supreme Court of the United States

October Term, 1991

SEBHATE KRASNIQI,

Petitioner,

v.

DALLAS COUNTY CHILD PROTECTIVE SERVICES UNIT OF THE TEXAS DEPARTMENT OF HUMAN SERVICES,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of The State Of Texas

PETITION FOR WRIT OF CERTIORARI BY SEBHATE KRASNIQI

MICHAEL AUSTIN HATCHELL

RAMEY, FLOCK, JEFFUS, CRAWFORD, HARPER & COLLINS,
A Professional Corporation
500 First City Place
P. O. Box 629
Tyler, Texas 75710
Telephone: 903/597-3301
Telecopier: 903/597-2413

Attorneys for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1.

When a State guarantees counsel and appeal in termination of parental rights cases, is a parent denied due process of law when the consideration of the merits of her appeal is denied because of the ineffectiveness of her counsel in failing to file a portion of the appellate record within the required time period?

2.

In cases where parental rights have been terminated by a trial court, does a State court rule of appellate procedure which prohibits late filing of the appellate record and which fails to grant the appellate court discretion to allow late filing, even under exceptional circumstances, deprive a litigant of due process of law when the failure to file was due solely to a procedural error of the appellant's counsel?

LIST OF PARTIES

1. Sebhate Krasniqi, Petitioner and Appellant below.
2. Sadri Krasniqi, Appellant below.
3. Dallas County Child Protective Services Unit of the Texas Department of Human Services, Respondent and Appellee below.
4. Urtim Krasniqi, a child.
5. Limma Krasniqi, a child.

TABLE OF CONTENTS

Page

Questions Presented i

List of Parties ii

Table of Contents iii

Table of Authorities iv

Opinions Below 1

Jurisdiction 2

Constitutional Provisions, Statutes, and Rules Involved in the Case 2

Statement of the Case 3

Argument 6

Conclusion 11

TABLE OF AUTHORITIES

Page

CASES:

Boddie v. Connecticut, 401 U.S. 371 (1971) 9

Evitts v. Lucey, 469 U.S. 387 (1985) 6, 7, 8, 9

Lassiter v. Department of Social Services of Durham County North Carolina, 452 U.S. 18 (1981) 9

Little v. Streater, 452 U.S. 1 (1981) 9

Matthews v. Eldridge, 424 U.S. 319 (1976).....9, 10

Santosky v. Kramer, 455 U.S. 745 (1981).....6, 7

Stanley v. Illinois, 405 U.S. 645 (1972)..... 9

STATUTES AND RULES:

28 U.S.C. §1257(a) 2

Fed. R. App. P.:

Rule 2..... 8

Rule 26(b)..... 8

Tex. R. App. P.:

Rule 50..... 4

Rule 53(k)..... 4

Rule 54.....5, 6, 8, 10, 11

Tex. Fam. Code Ann.:

Section 11.10(d)..... 7

Section 11.19 .....7, 10

No. _____

In The

Supreme Court of the United States

October Term, 1991

SEBHATE KRASNIQI,

Petitioner,

v.

DALLAS COUNTY CHILD PROTECTIVE SERVICES UNIT OF THE TEXAS DEPARTMENT OF HUMAN SERVICES,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of The State Of Texas

PETITION FOR WRIT OF CERTIORARI BY SEBHATE KRASNIQI

OPINIONS BELOW

The denial of writ of error by the Texas Supreme Court (Pet. App. 21) is unreported. The Texas Supreme Court's order denying Sebhate Krasniqi's motion for rehearing (Pet. App. 23) is also unreported. The opinion of the Court of Appeals for the Fifth District of Texas at Dallas (Pet. App. 1), along with the concurring opinion of Chief Justice Enoch of that court (Pet. App. 13), is reported at 809 S.W.2d 927 (Tex. App. – Dallas 1991, writ

denied). The judgment of the 304th Judicial District Court of Dallas County, Texas (Pet. App. 25) is unreported.

JURISDICTION

The Supreme Court of Texas denied Sebhate Krasniqi's application for writ of error on October 23, 1991, (Pet. App. 21), and denied her motion for rehearing on December 4, 1991. (Pet. App. 23). The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED IN THE CASE

Sebhate Krasniqi has been denied due process of law guaranteed by the Fourteenth Amendment to the United States Constitution. The text of the Fourteenth Amendment is reprinted in the Petitioner's Appendix beginning at page 34. This case also involves the application of several sections of the Texas Family Code and the Texas Rules of Appellate Procedure, the text of which are also reprinted in Petitioner's Appendix. The citation of each involved statute or rule and its location in the Appendix is as follows:

Citation	*Page*
TEX. FAM. CODE ANN. § 11.10(d) (West 1986)	Pet. App. 42
TEX. FAM. CODE ANN. § 11.19(a) (West 1986)	Pet. App. 43

TEX. FAM. CODE ANN. § 11.19(b) (West 1986)	Pet. App. 43
TEX. R. APP.P. 2	Pet. App. 35
TEX. R. APP.P. 50	Pet. App. 36
TEX. R. APP.P. 53	Pet. App. 37
TEX. R. APP.P. 54	Pet. App. 41

STATEMENT OF THE CASE

1. The parties and the proceedings below.

Sebhate Krasniqi[1] and her husband, Sadri, are ethnic Albanians who immigrated to the United States from Yugoslavia. The Dallas County Child Protective Services Unit of the Texas Department of Human Services is an agency of the State of Texas.

On August 16, 1989, DHS filed a suit to affect the parent-child relationship between the Krasniqis and their two children: Urtim, a son born May 1, 1980; and Limma, a daughter born August 24, 1984. (Tr. 21-23). DHS filed its petition to terminate the Krasniqis' parental rights on March 15, 1990. (Tr. 91). Trial was before a jury which returned its verdict on April 13, 1990. (Tr. 135). The judgment terminating the Krasniqis' parental rights is dated April 18, 1990. (Pet. App. 25).

---

[1] For clarity, Sebhate and Sadri Krasniqi will be referred to individually by their given names and collectively as "the Krasniqis." The Dallas County Child Protective Services of the Texas Department of Human Services will be referred to as "DHS."

Both Sebhate and Sadri timely filed an appeal bond which duly perfected their appeal to the Court of Appeals for the Fifth District of Texas at Dallas. (Tr. 242, 247). Without considering the merits of the appeal, the Dallas court of appeals affirmed the trial court's judgment. (Pet. App. 1). The Texas Supreme Court denied both Sebhate's and Sadri's applications for writ of error (Pet. App. 21) and their motions for rehearing (Pet. App. 23).

2. The facts.

The trial court's judgment forever terminated the Krasniqis' parental rights. The Krasniqis were denied an appeal on the merits of the termination because of their lawyers' procedural error of failing to timely file a portion of the appellate record.

Rule 50 of the Texas Rules of Appellate Procedure provides that the record on appeal consists of two elements: a transcript, and, where necessary, a statement of facts. In Texas practice, the statement of facts is the transcription of trial testimony and proceedings. In instances such as in this case, the statement of facts contains the evidence to be reviewed on appeal. Texas Rule of Appellate Procedure 53(k) provides that it is the appellant's duty to file the statement of facts with the appellate court. Without doing so, the appellant cannot meet its burden of producing sufficient record to demonstrate error.

Sebhate's and Sadri's lawyers had agreed between themselves that Sebhate's lawyer would obtain and file the transcript. They also agreed that Sadri's lawyer

would file the statement of facts. Texas Rule of Appellate Procedure 54(a) mandated that the record be filed 120 days after the signing of the trial court's judgment. Accordingly, the record was due to be filed in this case on August 16, 1990. Texas Rule of Appellate Procedure 54(c) allows the court of appeals the discretion to extend the time for filing the record, but only if a motion requesting the extension is filed not later than 15 days after the last day for filing the record. In this case, the last day on which Sebhate or Sadri could have obtained an extension for filing the statement of facts was August 31, 1990.

Sebhate's lawyer timely filed the transcript. Sadri's lawyer obtained the statement of facts, but did not attempt to file it until October 4, 1990, the day his brief was due to be filed. The clerk of the court of appeals refused to file the statement of facts when tendered by Sadri. Both Sebhate and Sadri moved the court of appeals to allow the late filing. DHS did not object. The court, however, denied the requests. Sebhate and Sadri moved the court to reconsider its denial, asserting that the application of rule 54(c) and the denial of late filing violated their right to due process of law. The court of appeals was not persuaded. (Pet App. 18). On November 30, 1990, the court advised the Krasniqis that it would entertain no further motions on the subject. (Pet. App. 20).

3. The opinions below.

The opinion of the Dallas court of appeals (Pet. App. 1), together with the concurrence of Chief Justice Enoch (Pet. App. 13), are the only substantive opinions below. The court of appeals held that this Court's reasoning in

Evitts v. Lucey, 469 U.S. 387 (1985), a criminal case concerning the right to effective assistance of counsel on appeal, did not apply to termination of parental rights cases, and that the dismissal of the Krasniqis' appeal without a consideration of the merits did not violate due process of law. (Pet. App. 7-8). The court of appeals also held that Texas Rule of Appellate Procedure 54(c), which gave it no authority, under the circumstances, to consider a late-filed record, did not violate the Krasniqis' right to due process of law. (Pet. App. 9-11).

Having no record before it, the court of appeals denied both Sebhate's and Sadri's requested relief and affirmed the trial court judgment terminating the Krasniqis' parental rights. (Pet. App. 11-12). In his concurrence, Chief Justice Enoch recognized the consequences of Rule 54(c) in this instance were "manifestly unjust,"; but he, too, found no violation of the Krasniqis' rights to due process. (Pet. App. 14).

The Supreme Court of Texas summarily declined to consider the Krasniqis' appeal. (Pet. App. 21, 23). Hence, this petition.

ARGUMENT

1. Sebhate was denied due process because of the ineffective assistance of counsel on appeal.

A parent's rights in the care, custody, and management of a child are fundamental, constitutionally protected liberty interests. *Santosky v. Kramer*, 455 U.S. 745

(1981). The termination or extinguishment of these protected interests necessarily involves fundamental constitutional rights; and the State must provide parents with fundamentally fair procedures when it moves to destroy familial bonds. *Santosky*, 455 U.S. at 753-754.

Recognizing the magnitude of the parent-child relationship and the severity of its termination, the State of Texas has mandated that indigent parents facing the termination of their parental rights be represented by counsel. TEX. FAM. CODE ANN § 11.10(d) (West 1986). And, Texas has specifically provided for the appeal of termination cases and given such cases precedence over other civil cases on the appellate docket. TEX. FAM. CODE ANN. § 11.19 (West 1986).

Sebhate is not indigent, and her counsel was not appointed pursuant to the Texas Family Code. However, whether her counsel was retained or appointed, she was entitled to his effective assistance. *Evitts v. Lucey*, 469 U.S. 387, 395 (1985). Similar to this case, the attorney in *Evitts* failed to file a required portion of the appellate record. On these facts, the Court ruled that a criminal defendant's first appeal of right is not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney. *Evitts*, 469 U.S. at 396. The result here, whether the State has expressly provided for the rights to counsel and appeal, should be no different. Otherwise, these so-called rights are meaningless.

In this context, a system of appeal can have no other purpose than to assure that the parental rights were validly terminated. As the Court stated in *Evitts*, a State may not extinguish the right to appeal because another

right of the appellant – the right to the effective assistance of counsel – has been violated. *Evitts*, 469 U.S. at 399-400.

Sebhate was denied an appeal on the merits of the termination of her parental rights because her husband's lawyer failed to timely file the statement of facts as he had agreed, and her lawyer did absolutely nothing to determine whether the statement of facts had been timely filed pursuant to the agreement. On these facts, it is beyond cavil that Sebhate's counsel on appeal was ineffective. The refusal of the court of appeals to consider the merits of Sebhate's appeal because of the ineffectiveness of her counsel, denied her due process of law.

2. Rule 54, as applied, violates Sebhate's right to due process.

According to the courts below, Rule 54 of the Texas Rules of Appellate Procedure is absolute. There are no exceptions outside its express provisions for the filing of the appellate record. And, unlike its federal counterpart,[2] Texas Rule of Appellate Procedure 2 does not allow the State court of appeals to modify the rules for good cause shown.

---

[2] "In the interest of expediting decision, *or for other good cause shown*, a court of appeals may, except as otherwise provided in Rule 26(b), suspend the requirements or provisions of any of these rules in a particular case. . . . " FED. R. APP. P. 2 (emphasis added). FED. R. APP. P. 26(b) refers to the enlargement of time for filing a notice of appeal, not the appellate record which was untimely filed in this case.

As applied in this instance, Rule 54 deprives Sebhate of due process of law and must be held constitutionally invalid. *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971), *Little v. Streater*, 452 U.S. 1, 16 (1981). This conclusion is inescapable when the facts of this case are analyzed in the context of the three-part balancing test prescribed by the Court in *Matthews v. Eldridge*, 424 U.S. 319 (1976) and reiterated in *Lassiter v. Department of Social Services of Durham County, North Carolina*, 452 U.S. 18 (1981).

As for the private interest involved, the Court has stated, " * * * a parent's desire for and right to 'the companionship, care, custody, and management of his or her children' is an important interest that 'undeniably warrants deference and, absent a powerful countervailing interest, protection.' * * * " *Lassiter*, 452 U.S. at 27, citing *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). As in *Lassiter*, the State in this instance is seeking and, in fact, has succeeded in terminating, not merely infringing upon, Sebhate's parental rights. Sebhate's interest in the accuracy and justice of the decision to terminate her parental status is a commanding one. *Lassiter*, 452 U.S. at 27. The State, with its interest in the welfare of children, shares Sebhate's interest in an accurate and just decision. *Lassiter*, 452 U.S. at 27.

As compared with the private interest involved, the State's interest in enforcing its procedural rules and expediting appeals, though laudable, is minimal. The State has other means at its disposal to enforce its rules and expedite appeals. Analyzing a similar situation in *Evitts*, 469 U.S. 399, the Court noted that the State may readily pursue disciplinary actions or sanctions against defending counsel, rather than depriving the litigant of his due

process rights. As for the expedition of appeals, Chief Justice Enoch of the Dallas court of appeals noted in his concurrence that Rule 54 does not save his court any measurable judicial resources nor does it necessarily provide for a prompt resolution of disputes. (Pet. App. 15). As for the finality of decisions, Chief Justice Enoch states " * * * I state again, whatever sureness this harsh rule gives to finality or time savings, it is too small to even measure. * * * " (Pet. App. 16). The State's interests in this matter are hardly sufficient to overcome the overwhelming private interests at stake.

As for the third *Matthews* consideration, the risk is great that the procedures will lead to an erroneous decision. Without a statement of facts, the appellant cannot challenge the legal or factual sufficiency of evidence or irregularities in the trial proceedings. The appellate court, therefore, cannot render a meaningful decision upon the merits. Without the appellate review guaranteed by Section 11.19 of the Texas Family Code to parents whose parental rights have been terminated at trial, the risk of an erroneous decision is great.

When weighed in the *Matthews* balance, Rule 54 comes up wanting. Each factor weighs in favor of allowing the discretionary late-filing of the appellate record under exceptional circumstances such as those at bar.

Because Sadri's lawyer failed to file the statement of facts in accordance with the express terms of Rule 54, appellate review of the merits of the termination of the Krasniqi's parental rights has been denied. Thus, a 34-day

miscalculation[3] deprives the Krasniqis not of an opportunity to recover or prevent economic loss, but rather the opportunity to recover the most significant relationships of human existence.

Thus, the consequences of Rule 54 in this instance are not only "manifestly unjust" as Chief Justice Enoch recognized (Pet. App. 14), but also fundamentally unfair. Fundamental fairness, the bedrock of due process, demands more for the Krasniqis and all parents who, whether rightfully or wrongfully, are placed in their position by the State.

CONCLUSION

For the reasons stated above, Sebhate Krasniqi's Petition for Writ of Certiorari should be granted.

Respectfully submitted,

MICHAEL AUSTIN HATCHELL
Texas State Bar No. 09219000

RAMEY, FLOCK, JEFFUS,
CRAWFORD, HARPER & COLLINS,
A Professional Corporation

500 First City Place
P.O. Box 629
Tyler, Texas 75710-0629
Telephone 903/597-3301
Telecopier 903/597-2413

Attorney for Petitioner

[3] The last day on which the Krasniqis could have requested an extension of time to file the statement of facts under Rule 54 was August 31, 1991. Sadri's lawyer tendered the statement of facts on October 4, 1991.

Affirmed and Opinion filed May 7, 1991

[SEAL]

In The
COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

No. 05-90-00965-CV

SADRI KRASNIQI AND SEBHATE KRASNIQI,
Appellants

V.

DALLAS COUNTY CHILD PROTECTIVE SERVICES UNIT OF THE TEXAS DEPARTMENT OF HUMAN SERVICES,
Appellee

On Appeal from the 304th Judicial District Court
Dallas County, Texas
Trial Court Cause No. 89-01244-W

OPINION

Before Chief Justice Enoch and
Justices Whitham and Whittington
Opinion By Justice Whitham

The parent-appellants, Sadri Krasniqi and Sebhate Krasniqi, appeal from a judgment terminating the parent-child relationships between them and their two children, Urtim Krasniqi and Limma Krasniqi. The judgment followed the filing of a petition for termination of parental rights by the appellee, Dallas County Child Protective

Services Unit of the Texas Department of Human Services, pursuant to the Texas Family Code, section 15.02(1)(D) and (E) and 15.02(2). The jury found that each parent has knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endanger the children's physical or emotional well-being and each parent has engaged in conduct and knowingly placed the children with persons who engaged in conduct which endangers the physical or emotional well-being of the children. *See* TEX. FAM. CODE ANN. § 15.02(1)(D) and (E) (Vernon Supp. 1991). The jury also found that termination of the parent-child relationship between each parent and the children is in the best interest of the children. *See* TEX. FAM. CODE ANN. § 15.02(2) (Vernon Supp. 1991). The initial points of error raise evidentiary matters only. We have no statement of facts. Accordingly, we affirm.

We have no statement of facts because of "time" constraints imposed by the Texas Rules of Appellate Procedure. The following chronology pertains to the "timeliness" issue before this court and to the orders of this court:

DATE	EVENT OR TRANSACTION
April 18, 1990	Trial court judgment signed.
April 26, 1990	Motion for New Trial filed in trial court.
July 5, 1990	Motion for New Trial overruled by trial court.
August 16, 1990	Record Due in Court of Appeals (TEX. R. APP. P. 54(a)).

August 31, 1990	Last day for filing a Motion to Extend Time for filing a Statement of Facts in the Court of Appeals (TEX. R. APP. P. 54(c)).
September 11, 1990	Motion to Extend Time to File Brief in the Court of Appeals (Sebhate Krasniqi).
September 12, 1990	Motion to Extend Time to File Brief in Court of Appeals (Sadri Krasniqi).
September 17, 1990	Order granting September 12, 1990 Motion and allowing the filing of brief by October 4, 1990 (Sadri).
September 20, 1990	Order granting September 11, 1990 Motion and allowing the filing of brief by October 29, 1990 (Sebhate).
October 4, 1990	Brief filed in Court of Appeals (Sadri).
October 4, 1990	Statement of Facts tendered to Court of Appeals.
October 5, 1990	Motion to Extend Time and Motion to Compel Clerk of the Court of Appeals to file Statement of Facts filed (by both Sadri and Sebhate).
October 15, 1990	Court of Appeals' Order denying October 5, 1990 Motion to Extend and Compel and Order striking Statement of Facts (as to both Sadri and Sebhate).
October 24, 1990	Motion to Reconsider filed in Court of Appeals (Sebhate).
October 25, 1990	Motion to Reconsider filed in Court of Appeals (Sadri).

October 29, 1990 — Court of Appeals' Order denying October 24, 1990 Motion to Reconsider (Sebhate).

October 29, 1990 — Brief filed in Court of Appeals (Sebhate).

November 13, 1990 — Second Motion to Reconsider (or Motion for Rehearing on Motion to Reconsider) filed in Court of Appeals (Sadri).

(NOTE: Counsel for Sadri Krasniqi denominated this motion as "MOTION FOR REHEARING OF MOTION TO RECONSIDER APPELLANTS MOTION TO EXTEND TIME AND COMPEL CLERK TO FILE STATMENT [SIC] OF FACTS, OR, ALTERNATIVELY, MOTION TO SUSPEND RULES OR FOR OUT OF TIME APPEAL." Counsel filed it on November 13, 1990. The Order on the original Motion to Reconsider filed on October 25, 1990 had not been acted upon as of November 13, 1990 (although the Order denying the original Motion shows to have been issued two days later). Thus, the Clerk of this Court of Appeals apparently changed the caption of this motion to conform with the situation that existed on the date of filing.)

November 15, 1990 Court of Appeals' Order denying October 25, 1990 Motion to Reconsider (Sadri).

November 30, 1990 Court of Appeals' Order denying November 13, 1990 Motion (Sadri).

Therefore, we have no statement of facts because the parents did not timely file the statement of facts and did not timely move to extend time for filing the statement of facts. Consequently, the statement of facts tendered to this court was stricken. The parents concede that they did not timely file the statement of facts and did not timely move to extend time for filing the statement of facts. The parents, however, in supplemental points of error contained in their respective supplemental briefs, contend that this court has erroneously declined to allow them to file the statement of facts. The parents' supplemental points of error advanced three arguments to support their contentions.

State Law

First, the parents argue that there is state law authority for out-of-time filing of the statement of facts. The parents point to Rule 2(b) of the Texas Rules of Appellate Procedure providing that "for good cause shown, a court of appeals . . . may suspend requirements and provisions of *any rule* in a particular case on application of a party or on its own motion and may order proceedings in accordance with its discretion." (emphasis that of the parents). TEX. R. APP. P. 2(b). We quote the rule in its entirety, including its heading:

> **(b) Suspension of Rules in Criminal Matters.** Except as otherwise provided in these rules, in the interest of expediting a decision or for other good cause shown, a court of appeals *or the Court of Criminal Appeals* may suspend requirements and provisions of any rule in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction. *Provided, however, that nothing in this rule shall be construed to allow any court to suspend requirements or provisions of the Code of Criminal Procedure.*

(emphasis added by this court). We conclude that rule 2(b) pertains to criminal appeals only. We reach this conclusion because the body of the rule refers to "a court of appeals" and "the Court of Criminal Appeals," but not to the "Supreme Court." Further, the body of the rule refers to the "Code of Criminal Procedure." Thus, we reason that rule 2(b) has no application to civil appeals. It is undisputed that a termination of parental rights case, such as the present case, is a civil proceeding and not a criminal proceeding. In concluding that the language of rule 2(b) refers to criminal appeals only, we place no import to the heading of rule 2(b): "Suspension of Rules in Criminal Matters." Hence, we do not reach the parents' argument that section 311.024 of the Code Construction Act applies and we must treat the rule's heading as not to "limit or expand the meaning of the statute [rule]." TEX. GOV'T CODE ANN. § 311.024 (Vernon 1988).

The parents, however, reach elsewhere within the Code Construction Act and insist that the language of section 311.021(3), "a just and reasonable result is intended," should be applied to the present case to mean

that denial of the filing of the statement of facts would not be a just and reasonable result. *See* TEX. GOV'T CODE ANN. § 311.021(3) (Vernon 1988). The parents assert the absence of a "just and reasonable result" constitutes a deprivation of due process rights afforded by the state and federal constitutions. We disagree for the following reasons. First, the parents rely on criminal cases only involving various time requirements. Again, we point out that the present case is a civil appeal, not a criminal appeal. Moreover, a civil proceeding, even one involving a higher degree of proof than that ordinarily required, is not to be treated as a criminal case with all the procedural requirements of a criminal hearing strictly applicable. *Howell v. Dallas County Child Welfare Unit*, 710 S.W.2d 729, 735 (Tex. App. – Dallas 1986, writ ref'd n.r.e.), *cert. denied*, 481 U.S. 1018 (1987). Second, due process and equal protection do not require that the procedural time limits for filing the statement of facts cannot be waived in a termination of parental rights case. *See Howell*, 710 S.W.2d at 734. Therefore, we conclude that the parents have suffered no violation of due process rights afforded by the state and federal constitutions. Hence, we find no merit in the parents' "State Law" argument.

Denial of Effective Assistance of Counsel

Second, the parents argue that the failure to file the statement of facts deprives them of effective assistance of counsel. The parents maintain that denial of an out-of-time filing of the statement of facts violates the due process clause of the Fourteenth Amendment because of the ineffectiveness of their counsel on appeal. The parents ground their argument on *Evitts v. Lucey*, 469 U.S. 387

(1985). In *Evitts*, the issue before the Supreme Court was "whether the state court's dismissal of the appeal, despite the ineffective assistance of respondent's counsel on appeal, violates the Due Process Clause of the Fourteenth Amendment." *Evitts*, 469 U.S. at 391-92. *Evitts* was a criminal case. As in the present case, "ineffective" in *Evitts* relates to an appellant's failure to timely file a required part of the appellate record. *See Evitts*, 469 U.S. at 389. Nevertheless, in *Howell*, we declined to extend the holding in *Evitts* to a termination of parental rights case such as the present case. *See Howell*, 710 S.W.2d at 735. Again, a civil proceeding, even one involving a higher degree of proof than that ordinarily required, is not to be treated as a criminal case with all the procedural requirements of a criminal hearing strictly applicable. *See Howell*, 710 S.W.2d at 735.

The parents would have us disregard *Howell* on the asserted basis "that our conclusion in *Howell* that *Evitts* was a Sixth Amendment case." The parents' underlying premise is wrong. Our opinion in *Howell* does not treat the issue as a Sixth Amendment case. Rather, *Howell* states the issue in *Howell* to be whether "the action of [this court] in denying appellant a statement of facts in this cause on appeal deprives her of equal protection and due process of law under the Fourteenth Amendment of the United States Constitution." *Howell*, 710 S.W.2d at 733. The only mention made of the Sixth Amendment in *Howell* is in connection with *Howell's* rejection of *Evitts* as controlling since *Evitts* was a criminal case. Thus, we treat the present case as we did *Howell;* that is, as nothing other than an appellate argument that our requiring of compliance with state rules of appellate procedure in a

civil proceeding somehow violates due process in a parental termination case. We rejected that approach in *Howell*. We again reject that argument in the present case. In reality, the present case is not one of "ineffective assistance of counsel" in the criminal law concept. Indeed, the asserted "ineffective" counsel are still with us and prosecute this appeal. Thus, we reason that if counsel are "ineffective," the parents who tell us these retained counsel failed to timely file the statement of facts must still remain satisfied with the quality of their services. To use words from the father's supplemental brief we have a case of "inadvertent failure to file," perhaps, but "ineffective assistance of counsel" in a civil appeal, no.

We conclude, therefore, that our refusal to allow untimely filing of the statement of facts did not deny the parents due process even though the parents' counsel tell us at oral argument that they were ineffective counsel for failing to timely file the statement of facts. Hence, we find no merit in the parents' "violation of due process because of ineffective assistance of counsel" argument. Simply put, the constitutional right to effective assistance of counsel in criminal actions does not extend to a civil proceeding involving the termination of parental rights. *Posner v. Dallas County Child Welfare Unit*, 784 S.W.2d 585, 588 (Tex. App. – Eastland 1990, writ denied).

Strict Application of Time Limits Violates Due Process of Law

Lastly, the parents argue that strict application to them of the time limits regarding filing of the statement of facts deprives them of due process of law. The parents

insist that they have a constitutional right to have the merits of this appeal heard. The parents maintain that it is well established that a statute or rule may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in the legitimate exercise of state power is beyond question. *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971). We read the parents to argue that the "protected right" in question is the right to be heard on the merits in this appeal. We recognize that a State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause. *Boddie*, 401 U.S. at 379. We conclude, however, that in the present case the State of Texas afforded the parents a meaningful opportunity to be heard in this appeal. Here, the State of Texas afforded the parents 120 days to file their statement of facts plus 15 days beyond that to file a motion for an extension of time to file the statement of facts. The parents do not complain of those time periods or contend that they were in any way unable to meet those time requirements. Instead, we gather from the supplemental brief of the mother and the supplemental brief of the father that the statement of acts had been obtained and could have been filed within the time limit, but that the father's counsel "inadvertently" failed to timely file the statement of facts. We decline to hold that "inadvertent failure" on the part of litigants to comply with a rule of appellate procedure can result in state denial to an individual of a meaningful opportunity to be heard. It follows that the strict application of the time limits regarding filing of the statements of facts did not deprive the parents of due process of law. Hence, we find

no merit in the parents' "strict application of time limits violates due process" argument.

Having found no merit in any of the parents' three arguments as to why this court erroneously declined to allow them to file the statement of facts, we overrule the mother's sole supplemental point of error contending that this court has erroneously declined to allow the mother to file the statement of facts, and we overrule the father's supplemental point of error contending that this court has erroneously declined to allow him to file the statement of facts. It must be recognized that the time limits prescribed by rule 54(c) [formerly rule 21(c) of the Texas Rules of Civil Procedure] accomplish an important purpose by fixing the date a judgment becomes final. *B. D. Click Co. v. Safari Drilling Corp.*, 638 S.W.2d 860, 862 (Tex. 1982). Valuable property and personal rights are fixed as of that time. If a record may be filed at any time after the cost bond is timely filed, a successful litigant will not know when the judgment becomes final. *B. D. Click Co.*, 638 S.W.2d at 862. Thus, the courts of appeals have no authority to consider a late filed 54(c) motion. *Trans-Continental Properties, Ltd. v. Taylor*, 717 S.W.2d 890, 891 (Tex. 1986). With this explanation, we turn to consider the consequences of the parents' appeal in the absence of a statement of facts.

Disposition of the Appeal in the Absence of a Statement of Facts

We have no statement of facts. All of the remaining points of error raised by both parents are evidentiary points of error. These points of error challenge the legal

and factual sufficiency of the evidence to support jury findings, complain of the admission of certain testimony, challenge the constitutional sufficiency of the evidence to terminate parental rights and assert deprivation of effective assistance of trial counsel. An appeal on an evidentiary matter without a statement of facts presents nothing for review. *Archer v. Wood*, 771 S.W.2d 631, 632 (Tex. App. – Dallas 1989, no writ). Absent a statement of facts, this court must presume that there is evidence to support findings of fact and the trial court's judgment. *Archer*, 771 S.W.2d at 632 (citing *Mays v. Pierce*, 154 Tex. 487, 493, 281 S.W.2d 79, 82 (1955)). Without a statement of facts, this court's review is limited generally to complaints concerning: 1) errors of law; 2) erroneous pleadings or rulings thereon; 3) an erroneous charge; 4) irreconcilable conflicts of jury findings; 5) summary judgment; and 6) fundamental error. *Archer*, 771 S.W.2d at 632. No such complaints are assigned as error in the present case. We overrule all points of error of both the mother and father.

We affirm the trial court's judgment.

/s/ Warren Whitham
WARREN WHITHAM
JUSTICE

Publish
TEX. R. APP. P. 90

900965F.P05

Concurring Opinion by Chief Justice Enoch

Concurring Opinion filed May 7, 1991

(seal)

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-90-00965-CV

SADRI KRASNIQI AND SEBHATE KRASNIQI, Appellants

V.

DALLAS COUNTY CHILD PROTECTIVE SERVICES UNIT OF THE TEXAS DEPARTMENT OF HUMAN SERVICES, Appellee

---

On Appeal from the 304th Judicial District Court
Dallas County, Texas
Trial Court Cause No. 89-01244-W

OPINION

Before Chief Justice Enoch and Justices Whitham and Whittington Concurring Opinion By Chief Justice Enoch

Parents have lost their children forever. This result may be properly supported by the evidence and commanded by law. I hope so. For in spite of requests by both the parents and the State, we will not fully review the trial court's decision because the parents' lawyers failed to file the statement of facts on time. This willful refusal is not required by the Common Law nor by statute; it is

required by a rule of procedure.[1] I agree with the majority that rule 2(b) and *Evitts* do not apply here.[2] I agree that application of 54(c) does not violate notions of due process of law. And, I agree that without a statement of facts, we must presume that the facts support the judgment. But, rule 54(c) which *Click* holds prohibits our consideration of a late filed statement of facts is manifestly unjust.[3] It must be changed.

Our jurisdiction to hear an appeal attachs when an appeal bond (or notice of appeal where appropriate) is timely filed in the trial court.[4] The appeal bond in this case was timely filed. This court has jurisdiction.

But, there is a catch. Rule 54(c) prevents us from considering the statement of facts if it is late, and if the motion to extend time to file is itself not timely filed.[5] However, we have neither lost jurisdiction nor have we been relieved of the jury to proceed with consideration of the merits of the appeal.[6] We must still await briefing of the issues by the parties; we must still hear argument if requested by the parties; we must still write an opinion expressing our reasons for our decision in the case. All of

---

[1] TEX. R. APP. P. 54(c).

[2] TEX. R. APP. P. 2(b); *Evitts v. Lucey*, 469 U.S. 387 (1985).

[3] *B.D. Click Co. v. Safari Drilling Corp.*, 638 S.W.2d 860 (Tex. 1982).

[4] TEX. R. APP. P. 41.

[5] *Trans-Continental Properties, Ltd. v. Taylor*, 717 S.W.2d 890, 891 (Tex. 1986)

[6] TEX. R. APP. P. 54(a); *B.D. Click Co.*, 638 S.W.2d at 861.

that happened in this case. Regardless, the appeals process was illusory.[7] In this case, the statement of facts was not filed in time and the motion to extend the time to file was tendered late, therefore, we could not review the evidence in the trial.

A rule such as rule 54(c) is promulgated to move appeals through the courts at an appropriate rate of speed. That is to say, encourage litigants to give due regard to time limits and permit the appellate court do dispose of the appeal under circumstances where litigants are less than prompt in meeting appellate deadlines. Thus, limited judicial resources are not wasted and the dispute is timely resolved. I do not argue with this premise. But the premise fails with rule 54(c); it does not save this Court any measurable, limited judicial resources nor does it necessarily provide a prompt resolution of the dispute. As a general proposition, attorneys know that a motion for extension to file the statement of facts must be filed within fifteen days after the original due date. Not a countable fraction of appeals do we dispose of because a lawyer failed to timely file an extension motion. As to those appeals which are disposed of due to a late-tendered statement of facts, nearly all foundered in the appellate sphere until the briefs were tendered because, regardless of whether we have a statement of facts before us, we must still review the transcript and consider all points of error not evidentiary based. I acknowledge that one reason given in *Click* for non-discretionary application of rule 54(c)'s predecessor was the need for finality

---

[7] *See Archer v. Wood*, 771 S.W.2d 632 (Tex. App. – Dallas 1989, no writ).

in judgments.[8] However, that statement is but the reason behind the proposition that appeals should be expeditious. I state again, whatever sureness this harsh rule gives to finality or time savings, it is too small to even measure.

I do not advocate abolition of rule 54(c). The purpose of appellate deadlines is to ensure a prompt resolution of the appeal. This insures to the benefit of the Court, the litigants, and the citizens of this State. However, a guiding principle of our appellate rules should be "to eliminate, *insofar as practical*, the requirements which sometimes resulted in disposition of appeals without consideration of the merits."[9] Specifically, the rules should not create unnecessary traps for the inattentive or unwary. An unnecessary trap is making some deadlines deadly and others deadly only if the court determines that this is the proper remedy for a recalcitrant litigant or attorney.[10] Under the discretionary rules such as rule 74(l), it is this Court's practice to notify an attorney who has missed a deadline that the appeal may be dismissed if no action is taken in a stated period of time (or if the appellee was the defaulting party, that the case would be submitted without consideration of the matters appellee wished to have brought forward). Arguably, it makes equally good sense that the appellate court have the opportunity to notify a defaulting appellant of the failure to timely file the state of facts (or even the transcript if

---

[8] *Click*, 638 S.W.2d at 862.

[9] *Click*, 638 S.W.2d at 861.

[10] *Compare*, TEX. R. APP. P. 54(c) *with* TEX. R. APP. P. 74(l), (n).

that had been the case here). Perhaps it makes more sense. Unlike a brief which is under the sole control of the attorney, the transcript is prepared by the trial court clerk and the statement of facts is prepared by the court reporter, and consequently, the attorney who is the "responsible" party may, in fact, not know that the record has not been filed.

Exceptions to Rule 54(c) have been urged.[11] However, I do not advocate exceptions to this rule, its failure to allow appellate court discretion is equally damaging to litigants regardless of the nature of the case, and it, in fact, provides none of the benefit that it theoretically purports to give. I would change the rule so that appellate courts, subject to the showing of a reasonable explanation, have the discretion to allow the late filing of the record.

/s/ Craig T. Enoch
CRAIG TRIVELY ENOCH
CHIEF JUSTICE

Publish
TEX. R. APP. P. 90
900965CF.P05

---

[11] See *E___ T___ J___ v. State*, 766 S.W.2d 871, 872-72 (Tex. App. – Dallas 1989, no writ) (Kinkeade, J., dissenting).

Order issued October 29, 1990

[SEAL]

In The
COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

No. 05-90-00965-CV

SEBHATE KRASNIQI, ET AL., Appellant

V.

DALLAS COUNTY CHILD PROTECTIVE SERVICES UNIT, Appellee

ORDER

BEFORE CHIEF JUSTICE ENOCH AND JUSTICES LAGARDE AND BURNETT

The Court has before it appellant Sebhate Krasnigi's October 24, 1990 motion to reconsider. It requests this Court to recognize an exception to the Texas Rules of Appellate Procedure governing civil cases, for those cases involving termination of parental rights. This Court, however, does not have the authority to create exceptions to the rules. *See Texas Utilities Electric Company v. Marshall,* 739 S.W.2d 665, 667 (Tex. App. – Dallas 1987, orig. proceeding). Accordingly, the motion is **DENIED.**

Appellee's October 24, 1990 motion to extend the time for filing a brief is **GRANTED** and the time is

extended until November 26, 1990. No further extensions will be granted unless exceptional circumstances are shown.

/s/ Joe Burnett
JOE BURNETT
JUSTICE

Order issued November 30, 1990

[SEAL]

In The
COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

No. 05-90-00965-CV

SADRI KRASNIQI, ET AL., Appellants

V.

DALLAS COUNTY CHILD PROTECTIVE SERVICES UNIT, Appellee

ORDER

BEFORE CHIEF JUSTICE ENOCH AND JUSTICES LAGARDE AND BURNETT

Appellant Sadri Krasniqi's November 13, 1990 motion for rehearing of motion to reconsider is **DENIED.**

The motions panel will entertain no further motions concerning the filing of the statement of facts in this cause. This appeal should proceed. Any further argument on the subject should be addressed in appellants' briefs on the merits of this appeal. *See E___T___J___ v. State*, 766 S.W.2d 871, 872 n.1. (Tex. App. – Dallas 1988, no writ).

/s/ Joe Burnett
JOE BURNETT
JUSTICE

THE SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

October 23, 1991

Mr. Winfield Scott
8117 Preston Road
600 Preston West
Dallas, TX 75225

Mr. J. Craig Jett
Travis Walk, Suite 300
4514 Travis Street
Dallas, TX 75205

Mr. Marc H. Richman
Law Offices of Marc H. Richman
Legal Arts Center, 2nd Floor
304 S. Record Street
Dallas, TX 75202

Mr. Kenneth A. Mayfield
Law Office of Marc H. Richman
Legal Arts Center, Suite 200
304 S. Record Street
Dallas, TX 75202

Mr. David Cole
Assistant District Attorney
7th Floor, Government Center
600 Commerce Street
Dallas, TX 75202

Mr. John Vance
District Attorney
7th Floor, Government Center
600 Commerce Street
Dallas, TX 75202

RE: Case No. D-1331

Style: SADRI KRASNIQI AND SEBHATE KRASNIQI v. DALLAS COUNTY CHILD PROTECTIVE SERVICES UNIT OF TEXAS DEPARTMENT OF HUMAN SERVICES

Dear Counsel:

Both applications for writ of error in the above referenced case were this day denied with the notation, Writ

Denied. Application for writ of error on behalf of Sadri Krasniqi is denied, as corrected.

Sincerely,

John T. Adams, Clerk

by /s/ Blanca E. Morin
Blanca Morin, Deputy

THE SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

December 4, 1991

Mr. Winfield Scott
8117 Preston Road
600 Preston West
Dallas, TX 75225

Mr. J. Craig Jett
Travis Walk, Suite 300
4514 Travis Street
Dallas, TX 75205

Mr. Marc H. Richman
Law Offices of Marc H. Richman
Legal Arts Center, 2nd Floor
304 S. Record Street
Dallas, TX 75202

Mr. Kenneth A. Mayfield
Law Office of Marc H. Richman
Legal Arts Center, Suite 200
304 S. Record Street
Dallas, TX 75202

Mr. David Cole
Assistant District Attorney
7th Floor, Government Center
600 Commerce Street
Dallas, TX 75202

Mr. John Vance
District Attorney
7th Floor, Government Center
600 Commerce Street
Dallas, TX 75202

RE: Case No. D-1331

Style: SADRI KRASNIQI AND SEBHATE KRASNIQI v. DALLAS COUNTY CHILD PROTECTIVE SERVICES UNIT OF TEXAS DEPARTMENT OF HUMAN SERVICES

Dear Counsel:

Today, the Supreme Court of Texas overruled both motions for rehearing in the above referenced application/s for writ of error.

Sincerely,

John T. Adams, Clerk

by /s/ Blanca E. Morin
Blanca Morin, Deputy

No. 89-1244-W-304TH

IN THE INTEREST OF	IN THE 304TH DISTRICT
URTIM KRASNIQUI,* ET AL	COURT OF
CHILDREN	DALLAS COUNTY, TEXAS

JUDGEMENT ON THE VERDICT OF JURY

On the 11th day of April, 1990, the Petitioner, Dallas County Child Protective Services Unit of the Texas Department of Human Services, appeared by its representative, Meredith Wunderlich, and by attorney, David Cole, Assistant District Attorney.

Also appearing was the parents, Sabhete** and Sadri Krasniqui, and their attorney, Robert Hedrick.

Also appearing was Winfield Scott, appointed by the Court as Guardian Ad Litem of the children the subject of this suit.

All parties appeared and announced ready for trial, thereupon a jury of twelve persons was impaneled and sworn and after hearing the evidence and receiving the charge of the Court, said jury on the 13th day of April, 1990, retired to consider their verdict and answered the following Special Issues and returned a verdict in open court answering the special issues as follows:

---

* Printer's Note: Krasniqiis misspelled as Krasniqui throughout the original judgment.

** Printer's Note: Sebhateis misspelled as Sabhete throughout the original judgment.

Question No. 1

Do you find by clear and convincing evidence that the mother, SABHETE KRASNIQUI, has engaged in conduct which endangered the physical or emotional well-being of the child, URTIM KRASNIQUI?

Answer "We Do" or "We Do Not"
Answer: *We Do*

Question No. 2

Do you find by clear and convincing evidence that the mother, SABHETE KRASNIQUI, has knowingly placed the child, URTIM KRASNIQUI, with persons who engaged in conduct which endangered the physical or emotional well-being of the child, URTIM KRASNIQUI?

Answer "We Do" or "We do Not"

Answer: *We Do*

Question No. 3

Do you find by clear and convincing evidence that the mother, SABHETE KRASNIQUI, has knowingly placed or knowingly allowed the child, URTIM KRASNIQUI, to remain in conditions or surroundings which endangered the physical or emotional well-being of the child, URTIM KRASNIQUI?

Answer "We Do" or "We Do Not"

Answer: *We Do*

In regard to Question Number 4, you are instructed that if you have answered either Question Number 1, or

Question Number 2, or Question Number 3, "We Do", then answer the following Question Number 4; otherwise, do not answer Question Number 4.

Question Number 4

Do you find by clear and convincing evidence that termination of the parental rights of the mother, SABHETE KRASNIQUI, and the child, URTIM KRASNIQUI, is in the best interest of the child, URTIM KRASNIQUI?

Answer "We Do" or "We Do Not"

Answer: *We Do*

Question Number 5

Do you find by clear and convincing evidence that the mother, SABHETE KRASNIQUI, has engaged in conduct which endangered the physical or emotional well-being of the child, LIMMA KRASNIQUI?

Answer "We Do" or "We Do Not"
Answer: *We Do*

Question Number 6

Do you find by clear and convincing evidence that the mother, SABHETE KRASNIQUI, has knowingly placed the child, LIMMA KRASNIQUI, with persons who engaged in conduct which endangered the physical or emotional well-being of the child, LIMMA KRASNIQUI?

Answer "We Do" or "We Do Not"

Answer: *We Do*

Question Number 7

Do you find by clear and convincing evidence that the mother, SABHETE KRASNIQUI, has knowingly placed or knowingly allowed the child, LIMMA KRASNIQUI, to remain in conditions or surroundings which endangered the physical or emotional well-being of the child, LIMMA KRASNIQUI?

Answer "We Do" or "We Do Not"

Answer: *We Do*

In regard to Question Number 8, you are instructed that if you have answered either Question Number 5, or Question Number 6, or Question Number 7, "We Do", then answer the following Question Number 8; otherwise, do not answer Question Number 8.

Question Number 8

Do you find by clear and convincing evidence that termination of the parental rights of the mother, SABHETE KRASNIQUI, and the child, LIMMA KRASNIQUI, is in the best interest of the child, LIMMA KRASNIQUI?

Answer "We Do" or "We Do Not"

Answer: *We Do*

Question Number 9

Do you find by clear and convincing evidence that the father, SADRI KRASNIQUI, has engaged in conduct

which endangered the physical or emotional well-being of the child, URTIM KRASNIQUI?

Answer "We Do" or "We Do Not"
Answer: *We Do*

Question Number 10

Do you find by clear and convincing evidence that the father, SADRI KRASNIQUI, has knowingly placed the child, URTIM KRASNIQUI, with persons who engaged in conduct which endangered the physical or emotional well-being of the child, URTIM KRASNIQUI?

Answer "We Do" or "We Do Not"

Answer: *We Do*

Question Number 11

Do you find by clear and convincing evidence that the father, SADRI KRASNIQUI, has knowingly placed or knowingly allowed the child, URTIM KNASNIQUI [sic], to remain in conditions or surroundings which endangered the physical or emotional well-being of the child, URTIM KRASNIQUI?

Answer "We Do" or "We Do Not"

Answer: *We Do*

In regard to Question Number 12, you are instructed that if you have answered either Question Number 9, or Question Number 10, or Question Number 11, "We Do", then answer the following Question Number 12; otherwise, do not answer Question Number 12.

Question Number 12

Do you find by clear and convincing evidence that termination of the parental rights of the father, SADRI KRASNIQUI, and the child, URTIM KRASNIQUI, is in the best interest of the child, URTIM KRASNIQUI?

Answer "We Do" or "We Do Not"

Answer: *We Do*

Question Number 13

Do you find by clear and convincing evidence that the father, SADRI KRASNIQUI, has engaged in conduct which endangered the physical or emotional well-being of the child, LIMMA KRASNIQUI?

Answer "We Do" or "We Do Not"
Answer: *We Do*

Question Number 14

Do you find by clear and convincing evidence that the father, SADRI KRASNIQUI, has knowingly placed the child, LIMMA KRASNIQUI, with persons who engaged in conduct which endangered the physical or emotional well-being of the child, LIMMA KRASNIQUI?

Answer "We Do" or "We Do Not"

Answer: *We Do*

Question Number 15

Do you find by clear and convincing evidence that the father, SADRI KRASNIQUI, has knowingly placed or knowingly allowed the child, LIMMA KRASNIQUI, to remain in conditions or surroundings which endangered the physical or emotional well-being of the child, LIMMA KRASNIQUI?

Answer "We Do" or "We Do Not"

Answer: *We Do*

In regard to Question Number 16, you are instructed that if you have answered either Question Number 13, or Question Number 14, or Question Number 15, "We Do", then answer the following Question Number 16; otherwise, do not answer Question Number 16.

Question Number 16

Do you find by clear and convincing evidence that termination of the parental rights of the father, SADRI KRASNIQUI, and the child, LIMMA KRASNIQUI, is in the best interest of the child, LIMMA KRASNIQUI?

Answer "We Do" or "We Do Not"

Answer: *We Do*

Said verdict and answers of the jury being signed by the jurors impaneled as herein set out, and such verdict having been submitted in accordance with the instructions of the Court in its charge, such verdict was received and accepted by the Court and the jury ordered discharged.

In accordance with the finding of the jury on the Issues as submitted, the Court finds that it would be in the best interest of the children in question, Urtim Krasniqui, born May 1, 1980 in Chicago, Illinois and Limma Krasniqui, born August 24, 1984 in Dallas, Texas, that Petitioner be granted relief as prayed for herein.

IT IS, THEREFORE, ORDERED AND DECREED by the Court that the parent-child relationship between the Respondent, Sabhete Krasniqui and the children, Urtim Krasniqui and Limma Krasniqui, be and is hereby terminated.

IT IS, THEREFORE, ORDERED AND DECREED by the Court that the parent-child relationship between the Respondent, Sadri Krasniqui and the children, Urtim Krasniqui and Limma Krasniqui, be and is hereby terminated.

IT IS FURTHER ORDERED AND DECREED by the Court that the Director of the Dallas County Child Protective Services Unit of the Texas Department of Human Services be and is hereby appointed Permanent Managing Conservator of the children, Urtim Krasniqui and Limma Krasniqui, and the Permanent Managing Conservator shall have the authority as set out in Section 14.02 of the Texas Family Code, as amended.

This case is set for a Chapter 18 hearing on the 9th day of August, 1990 at 10:30 o'clock A.M. in the 304th District Court located on the 6th floor of the Government Center, Dallas Texas.

SIGNED THIS THE 18th DAY OF April, 1990.

/s/ Harold C. Gaither, Jr.
Judge of the District
Court of Dallas
County, Texas

ENDORSEMENT ON INSTRUMENT NO. 89-1244

In the Interest of
Urtim Krasniqui, et al
JUDGMENT ON THE VERDICT OF JURY
Signed and Entered: April 18, 1990
Recorded in Vol. W529, Page 386
IN THE MINUTES OF THE 304TH JUDICIAL DISTRICT
COURT OF DALLAS COUNTY, TEXAS

CONSTITUTION OF THE UNITED STATES
AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer

of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

TEXAS RULES OF APPELLATE PROCEDURE

Rule 2. Relationship to Jurisdiction and Suspension

(a) Relationship to Jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the courts of appeals, the Court of Criminal Appeals or the Supreme Court as established by law.

(b) Suspension of Rules in Criminal Matters. Except as otherwise provided in these rules, in the interest of expediting a decision or for other good cause shown, a court of appeals or the Court of Criminal Appeals may suspend requirements and provisions of any rule in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction. Provided, however, that nothing in this rule shall be construed to allow any court to suspend requirements or provisions of the Code of Criminal Procedure.

Rule 50. Record on Appeal

(a) Contents. The record on appeal shall consist of a transcript and where necessary to the appeal, a statement of facts.

(b) Stipulation as to Record. The parties by written stipulation filed with the clerk of the trial court may designate the parts of the record, proceedings and evidence to be included in the record on appeal.

(c) Agreed Statement. The parties may agree upon a brief statement of the case and of the facts proven as will enable the appellate court to determine whether there is error in the judgment. Such statement shall be copied into the transcript in lieu of the proceedings themselves.

(d) Burden on Appellant. The burden is on the appellant, or other party seeking review, to see that a sufficient record is presented to show error requiring reversal.

(e) Lost or Destroyed Record. When the record or any portion thereof is lost or destroyed it may be substituted in the trial court and when so substituted the record may be prepared and transmitted to the appellate court as in other cases. If the appellant has made a timely request for a statement of facts, but the court reporter's notes and records have been lost or destroyed without appellant's fault, the appellant is entitled to a new trial unless the parties agree on a statement of facts.

(f) Violation of Rules: Costs. An appellate court may impose or withhold costs as the circumstances of the case may require for any infraction of the rules with respect to the preparation of the record on appeal.

Rule 53. The Statement of Facts on Appeal

(a) Appellant's Request. The appellant, at or before the time prescribed for perfecting the appeal, shall make a written request to the official reporter designating the portion of the evidence and other proceedings to be included therein. A copy of such request shall be filed with the clerk of the trial court and another copy served on the appellee. Failure to timely request the statement of facts under this paragraph shall not prevent the filing of a

statement of facts or a supplemental statement of facts within the time prescribed by Rule 54(a).

(b) Other Requests. Within ten days after service of a copy of appellant's request, any party may in the same manner request additional portions of the evidence and other proceedings to be included.

(c) Abbreviation of Statement. All matters not essential to the decision of the questions presented on appeal shall be omitted. Formal parts of all exhibits and more than one copy of any document appearing in the statement of facts shall be excluded. All documents shall be abridged by omitting all irrelevant and formal portions thereof.

(d) Partial Statement. If appellant requests or prepares a partial statement of facts, he shall include in his request or proposal a statement of the points to be relied on and shall thereafter be limited to such points. If such statement is filed, there shall be a presumption on appeal that nothing omitted from the record is relevant to any of the points specified or to the disposition of the appeal. Any other party may designate additional portions of the evidence to be included in the statement of facts.

(e) Unnecessary Portions. In civil cases if either party requires more of the testimony or other proceedings than is necessary, he shall be required by the appellate court to pay the costs thereof, regardless of the outcome of the appeal.

(f) Certification by Court Reporter. The statement of facts shall be in sufficient form to be filed in the

appellate court when it is certified by the official court reporter.

(g) Reporter's Fees. The official court reporter shall include in his certification the amount of his charges for preparation of the statement of facts. The Supreme Court and the Court of Criminal Appeals may from time to time make an order providing the fees which court reporters may charge.

(h) Form. The Supreme Court and the Court of Criminal Appeals will make an order or orders directing the form of the statement of facts and the court reporter will prepare the same in conformity therewith.

(i) Narrative Statement. A statement of facts prepared by the official reporter shall be in question and answer form. In lieu of requesting such a statement of facts, a party may prepare and file with the clerk of the trial court a condensed statement in narrative form of all or part of the testimony and deliver a true copy to the opposing party or his counsel, and such opposing party, if dissatisfied with the narrative statement, may within ten days after such delivery, require the testimony in question and answer form to be substituted for all or part thereof.

(j) Free Statement of Facts.

(1) *Civil Cases.* In any case where the appellant has filed the affidavit required by Rule 40 to appeal his case without bond, and no contest is filed, or any contest is overruled, the court or judge upon application of appellant shall order the official reporter to prepare a statement of facts, and to deliver it to appellant,

but the court reporter shall receive no pay for same.

(2) *Criminal Cases.* Within the time prescribed for perfecting the appeal an appellant unable to pay for the statement of facts may, by motion and affidavit, move the trial court to have the statement of facts furnished without charge. After hearing the motion, if the court finds the appellant is unable to pay for or give security for the statement of facts, the court shall order the reporter to furnish the statement of facts, and when the court certifies that the statement of facts has been furnished to the appellant, the court reporter shall be paid from the general funds of the county, by the county in which the offense was committed the sum set by the trial judge.

(k) Duty of Appellant to File. It is the appellant's duty to cause the statement of facts to be filed with the Clerk of the Court of Appeals.

(l) Duplicate Statement in Criminal Cases. In criminal cases, if any party desires a statement of facts included in the record, a duplicate of the statement of facts shall be prepared by the court reporter and filed with the clerk of the court.

(m) When No Statement of Facts Filed in Appeals of Criminal Cases. If the clerk of the appellate court does not receive a statement of facts when due, he shall notify the trial judge and the appellant's attorney, if the appellant's attorney can be determined from the transcript, that a statement of facts has not been filed and that in the absence of a statement of facts the appeal will be submitted on the transcript alone. If no statement of facts has

been filed, the appellate court may order the trial court to hold a hearing to determine whether the appellant has been deprived of a statement of facts because of ineffective counsel or for any other reason, to make findings of fact and conclusions of law, to appoint counsel if necessary, and to transmit to the appellate court the record of the hearing. The appellate court may order a late filing of statement of facts.

Rule 54. Time to File Record

(a) In Civil Cases – Ordinary Timetable. The transcript and statement of facts, if any, shall be filed in the appellate court within sixty days after the judgment is signed, or, if a timely motion for new trial or to modify the judgment has been filed by any party, or if any party has timely filed a request for findings of fact and conclusions of law in a case tried without a jury, within one hundred twenty days after the judgment is signed. If a writ of error has been perfected to the court of appeals the record shall be filed within sixty days after perfection of the writ of error. Failure to file either the transcript or the statement of facts within such time shall not affect the jurisdiction of the court, but shall be ground for dismissing the appeal, affirming the judgment appealed from, disregarding materials filed, or applying presumptions against the appellant, either on appeal or on the court's own motion, as the court shall determine. The court has authority to consider all timely filed transcripts and statements of facts, but shall have no authority to consider a

late filed transcript or statement of facts, except as permitted by this rule.

(b) In Criminal Cases – Ordinary Timetable. The transcript and statement of facts shall be filed in the appellate court within sixty days after the day sentence is imposed or suspended in open court or the order appealed from has been signed, if a motion for new trial is not filed. If a timely motion for new trial is filed, the transcript and statement of facts shall be filed within one hundred twenty days after the day sentence is imposed or suspended in open court or the order appealed from has been signed.

(c) Extension of Time. An extension of time may be granted for late filing in a court of appeals of a transcript or statement of facts, if a motion reasonably explaining the need therefor is filed by appellant with the court of appeals not later than fifteen days after the last date for filing the record. Such motion shall also reasonably explain any delay in the request required by Rule 53(a).

TEXAS FAMILY CODE

§ 11.10. Guardian Ad Litem

* * *

(d) In any suit brought by a governmental entity seeking termination of the parent-child relationship or to be named conservator of a child, the court shall appoint an attorney ad litem to represent the interests of the child

as soon as practicable to insure adequate representation of the child's interest. In any suit in which termination of the parent-child relationship is sought, the court shall appoint an attorney ad litem to represent the interests of each indigent parent of the child who responds in opposition to the termination. If both parents of the child are indigent and oppose termination and the court finds that the interests of the parents are not in conflict, the court may appoint a single attorney ad litem to represent the interests of both parents.

---

§ 11.19. Appeal

(a) Appeals from orders, decrees, or judgments entered in suits affecting the parent-child relationship, when allowed under this section or under other provisions of law, shall be as in civil cases generally. Appeals in suits affecting the parent-child relationship wherein termination of that relationship is in issue shall be given precedence over other civil cases by the appellate courts.

(b) An appeal may be taken by any party to a suit affecting the parent-child relationship from an order, decree, or judgment;

(1) entered under Chapter 13 of this code;

(2) entered under Chapter 14 of this code appointing or refusing to appoint a managing conservator; appointing or refusing to appoint a possessory conservator; ordering or refusing to

order payments for support of a child; or modifying any such order previously entered;

(3) entered under Chapter 15 of this code terminating or refusing to terminate the parent-child relationship; or appointing a managing conservator;

(4) entered under Chapter 16 of this code granting or refusing an adoption.

* * *